

103 FRAUD, WASTE, AND ABUSE

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REFERENCES: A.R.S. § 36-2901, A.R.S. § 36-2918, A.R.S. § 36-2957, A.R.S. §36-2903.01(K); A.A.C. R9-22-702; 42 CFR 455.101, 42 CFR 438.608, 42 CFR Part 438, Subpart H, 42 CFR 455, 42 CFR 455, Subpart A, 42 CFR 455, Subpart B, 42 CFR 455.2, 42 CFR 455.23, 42 CFR 455.101, 42 CFR 455.436; ACOM Policy 103; Division Operations Policy 103; State Medicaid Director Letters 08-003 and 09-001; Section 6032 of the Deficit Reduction Act

PURPOSE

This policy applies to the Administrative Services Subcontractors (AdSS) of the Division of Developmental Disabilities (Division). The purpose of this policy is to outline the corporate compliance requirements including the reporting responsibilities for alleged Fraud, Waste, or Abuse, involving services funded by the Division. This policy also addresses additional responsibilities regarding regulatory compliance with broader program integrity and programmatic requirements.

DEFINITIONS

1. "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Division program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care, including beneficiary practices that result in unnecessary cost to the Division Program.
2. "Administrative Services Subcontract" means an agreement that delegates any of the requirements of the contract with the Division, including, but not limited to the following:
 - a. Claims processing, including pharmacy claims
 - b. Pharmacy Benefit Manager (PBM)
 - c. Dental Benefit Manager
 - d. Credentialing, including those for only primary source verification through Credential Verification Organization (CVO)
 - e. Medicaid Accountable Care Organization (ACO)

- f. Service Level Agreements with any division or subsidiary of a corporate parent owner; providers are not AdSS.
 - g. CHP and the Division Subcontracted Health Plan
 - i. A person, individual or entity, who holds an Administrative Services Subcontract is an administrative services subcontractor.
 - ii. Providers are not administrative services subcontractors.
3. "Agent" -means any person who has been delegated the authority to obligate or act on behalf of a Provider as specified in 42 CFR 455.101.
4. "Contract" means the AdSS contract with the Division.
5. "Corporate Compliance Officer" means an individual located in Arizona and who implements and oversees the AdSS Compliance Program. The Corporate Compliance Officer shall be a management official, available to all employees, with designated and recognized authority to access records and make independent referrals to the AHCCCS Office of the Inspector

General. The Corporate Compliance Officer shall not hold any other position other than the Contract Compliance Officer position. The Corporate Compliance Officer shall be an onsite management official who reports directly to the Contractor's AdSS Chief Executive Officer (CEO) and Board of Directors, if applicable. The Corporate Compliance Officer shall be responsible for developing and implementing policies, procedures and practices designed to ensure compliance with the requirements of the Contract as specified in 42 CFR 438.608.

6. "Credible Allegation of Fraud" means the State Medicaid agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis. as specified in 42 CFR 455.2.
7. "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person, including any act that constitutes fraud under applicable State or Federal law, as defined in 42 CFR 455.2..

8. "Managing Employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency as outlined in 42 CFR 455.101.
9. "Member" means the same as "Client" as defined in A.R.S. § 36-551.
10. "Provider" means a person, institution, or group engaged in the delivery of services, or ordering and referring those services, who has an agreement with the Division to provide services to Division Members.
11. "Waste" - means overutilization or inappropriate utilization of services, misuse of resources, or practices that result in unnecessary costs to the Medicaid Program.

POLICY

A. The AdSS shall:

1. Have in place internal controls, policies, and procedures to:

- a. Prevent, detect, and report credible Fraud, Waste, and Abuse activities to the Division.
 - b. Implement a suspension, termination, or exclusion of a provider from the ADSS network of providers.
2. Have a Corporate Compliance Program that complies with the AdSS's contract with the Division and all state and federal laws, including 42 CFR Part 438, Subpart H and is developed under the AdSS corporate compliance plan including:
- a. Program integrity goals and objectives;
 - b. Descriptions of internal and external controls employed by the AdSS to ensure compliance with State and Federal law; and
 - c. The AdSS's corporate compliance activities, as outlined in ACOM 103.
3. Submit the AdSS written Corporate Compliance Plan to the Division annually, as specified in the Contract.
4. Submit to the Division an external audit plan/schedule and audit report of all individual provider audits using ACOM 103

Attachment C as specified in Section (F)(3) of the AdSS contract with the Division, Contractor Chart of Deliverables.

- a. In each audit report, the AdSS shall include:
 - i. An objective, scope, estimated dollars at risk, current audit results, key audit findings, recommendations, corrective actions required, and conclusion;
 - ii. Copies of the report for each audit scheduled and completed; and
 - iii. If an audit was not completed timely, include a reason why and a date when the audit will be completed.
- b. AdSS shall submit a minimum of 20 audits semiannually.
- c. The AdSS shall submit follow-up audits on a separate ACOM 103 Attachment C and not count towards the required minimum audit numbers as stated above in this subsection.

5. Submit complete, accurate, and current disclosure information, as described in 42 CFR Part 455, Subpart B and as specified in Contract, upon execution of a Contract with the State and upon renewal or extension of the Contract utilizing Attachment A and Attachment A-1.
 - a. The AdSS shall ensure review of its response by its legal counsel prior to submitting disclosure information.
 - b. As specified in Contract, the AdSS shall submit all information electronically, without any exceptions.
 - c. AHCCCS/Office of Administrative Legal Services (OALS) and AHCCCS-OIG reviews the AdSS submitted disclosure information for completeness and AHCCCS-OIG screens and confirms that persons listed in the submitted information are not excluded from participation in the Medicaid program.
6. Complete all information as specified in ACOM 103 Attachment A and Attachment A-1 to enable AHCCCS-OIG to confirm that

persons with an ownership or control interest in the AdSS are not excluded from participation in the Medicaid program.

- a. The AdSS shall obtain and disclose the information regarding the ownership and control interest of its subcontractors.
- b. The AdSS shall retain the results of the disclosure of ownership and control and the disclosure of information on persons convicted of crimes and reported to the Division.
- c. The AdSS shall complete and submit an attestation as specified in ACOM 103 Attachment A along with the disclosure information described in this subsection and that the information provided is accurate, complete, and truthful.
- d. Consistent with 42 CFR 457.990 and 42 CFR 438.606, the AdSS Chief Executive Officer, Chief Financial Officer, or an individual who reports directly to the Chief Executive Officer or Chief Financial Officer with delegated authority to

sign for the Chief Executive Officer or Chief Financial Officer shall sign the attestation.

- e. Failure to provide all complete and accurate disclosures and an attestation signed by an individual with appropriate authority may result in the withholding of payments under the Contract or the recovery, recoupment, or offset of any monies remitted without limitation.
7. Disclose, and require its subcontractors to disclose, to the Division the identity of any employee or person with ownership or control interest who is excluded from participation in any federal healthcare programs.
8. Comply with the requirements of Section 6032 Deficit Reduction Act of 2005 (DRA) [Section 1902(a)(68) of the Social Security Act, 42 CFR 457.1285, and 42 CFR 438.608(a)(6)].
9. As a condition for receiving payments, establish written policies, and ensure adequate training and ongoing education for, all of its employees, including management, Members, and of any subcontractors or Agents of the AdSS regarding the following:

- a. Detailed information about the Federal False Claims Act;
 - b. The administrative remedies for false claims and statements;
 - c. Any state laws relating to civil or criminal penalties for false claims and statements; and
 - d. The whistleblower protections under such laws.
10. Ensure adequate training addressing Fraud, Waste, and Abuse prevention, recognition and reporting, and encourage employees, Members, and any subcontractors to report Fraud, Waste, and Abuse without fear of retaliation.
 11. Ensure an internal reporting process relating to the reporting of Fraud, Waste, or Abuse that is well-defined is made known to all employees, Members, and any subcontractors.
 12. Conduct research and proactively identify changes for program integrity that are relevant to the corporate compliance program, and periodically review and revise the Fraud, Waste, and Abuse policies or guidance from the Division or AHCCCS to reflect such changes due to rules, regulations, or new initiatives.

13. Regularly attend and participate in Division work group meetings.
14. Respond promptly and not later than 20 days to requests for information from the Division.
15. Cooperate with the Division regarding any allegation of Member billing in violation of A.R.S. § 36-2903.01(K) and A.A.C. R9-22-702.
16. Have a method of verifying with Division members that they received the services billed by Providers to identify potential service or claim fraud.
17. Perform periodic audits through Member contact and report the results of these audits to the Division as specified in ACOM Policy 424.
18. Maintain Compliance with all State and Federal laws and regulations related to Fraud, Waste, and Abuse, even if not directly specified in this policy.

B. REPORTING RESPONSIBILITIES

1. Fraud, Waste, and Abuse

- a. If an AdSS discovers, or is made aware, that an incident of alleged Fraud, Waste, or Abuse has occurred or is occurring, the AdSS shall immediately report the incident to AHCCCS-OIG as specified in Contract and by completing and submitting the "Report Member, Provider, or Contractor Suspected Fraud or Abuse of the Program" form available on the AHCCCS-OIG webpage, and attach all pertinent documentation that could assist AHCCCS in its investigation shall be attached to the form,;
- b. If the AdSS identifies an incident that warrants self-disclosure, the AdSS shall report the incident within ten calendar days to AHCCCS-OIG by completing and submitting the Provider Self-Disclosure form available on the AHCCCS-OIG webpage and attach all pertinent documentation that could assist AHCCCS in its investigation.
- c. When the AdSS has referred a case of alleged Fraud, Waste, or Abuse to AHCCCS-OIG, the AdSS shall take no

action to recoup, offset, or act in any manner inconsistent with AHCCCS-OIG's authority to conduct a full investigation, obtain a comprehensive recovery of any suspected overpayments, or impose a civil monetary penalty;

- d. The AdSS shall conduct preliminary review work regarding a referral at the request of AHCCCS-OIG in order to expand the allegation and obtain documentation to support the investigation being conducted by AHCCCS-OIG;
- e. The AdSS shall provide documentation requested by AHCCCS-OIG within 30 calendar days of the request.
- f. The AdSS may receive notification from AHCCCS-OIG when the investigation concludes in a manner that safeguards the integrity and confidentiality of the investigation;
- g. The AdSS shall ensure proper disposition of any matters returned by AHCCCS-OIG as non-medicaid Fraud, Waste, or Abuse in accordance with any applicable laws and contracts;

- h. The AdSS shall adhere to the requirement that AHCCCS-OIG has the sole authority to handle and dispose of any matter involving Fraud, Waste, or Abuse and assigns to AHCCCS the right to recoup any amounts overpaid to a Provider as a result of Fraud, Waste, or Abuse.
- i. The AdSS shall forward anything of value that could be construed to represent the repayment of any amount expended due to Fraud, Waste or Abuse that is recovered to AHCCCS-OIG within 30 days of its receipt.
- j. As specified in the AHCCCS Minimum Subcontractor Provisions (MSPs), the requirements outlined in this section shall apply to any actions undertaken by the AdSS on behalf of a subcontractor.
- k. The AdSS shall relinquish each, every, any and all claims to any monies, received by AHCCCS as a result of any program integrity efforts including:
 - i. Recovery of an overpayment;

- ii. Civil monetary penalties or assessments;
 - iii. Civil settlements or judgments;
 - iv. Criminal restitution;
 - v. Collection by AHCCCS or indirectly on AHCCCS' behalf by the Office of the Attorney General; or
 - vi. Other, as applicable.
- I. The AdSS shall report to AHCCCS, as specified in Contract and the Division Medical Policy 950, any credentialing denials including:
- i. That are the result of licensure issues;
 - ii. Quality of care concerns;
 - iii. Excluded, terminated, or otherwise sanctioned Providers; or
 - iv. Alleged Fraud, Waste, or Abuse.

**C. THE ADSS' CORPORATE COMPLIANCE RESPONSIBILITIES
RELATED TO FRAUD, WASTE, AND ABUSE**

1. The AdSS shall:

- a. Process all referrals of allegations of suspected Member and provider Fraud, Waste, or Abuse.
- b. Oversee, monitor, and review all documents and functions as they relate to Fraud, Waste, and Abuse prevention, detection, and reporting.
- c. Maintain and monitor a tracking system of Fraud, Waste, and Abuse investigations.
- d. Ensure all employees, Providers, Agents, and Members receive adequate training and information regarding Fraud, Waste and Abuse prevention, identification and reporting.
- e. Assure employees, subcontractors, Providers, Agents, and Members that they can report Fraud, Waste, and Abuse without fear of retaliation.
- f. Develop and maintain open channels of communication with the Division, AHCCCS-OIG, subcontractors, Providers, Agents, and Members to combat Fraud, Waste, and Abuse at all levels in the System.

- g. Make referrals to AHCCCS-OIG to investigate cases of potential Member billing in violation of A.R.S. § 36-2903.01(K) and A.A.C. R9-22-702.
- h. Perform all functions required by Section 6032 of the Deficit Reduction Act, including the auditing of providers to ensure their compliance.
- i. Ensure the AdSS is in compliance with its federal obligations regarding disclosure of ownership and control, managing employees database exclusion, and checks, and criminal convictions checks, and all other federal requirements related to provider screening and enrollment.

SUPPLEMENTAL INFORMATION

1. AHCCCS/Office of Inspector General (AHCCCS/OIG) is responsible for reviewing suspected incidents of fraud, waste, and/or abuse. This includes the preliminary investigation of credible allegations of fraud, the preliminary and full investigation of fraud, waste, and/or abuse, and any other matters necessary to comply with the authority or

obligations vested in AHCCCS/OIG under State or Federal law, rule, regulations, or policies.

2. AUTHORITY

The AHCCCS Office of Inspector General (AHCCCS-OIG) is the division of AHCCCS that has the authority to conduct preliminary and full investigations, relating to fraud, waste, and abuse, involving the programs administered by AHCCCS. Pursuant to 42 CFR 455.12-23 and an Intergovernmental Agreement with the Arizona Attorney General's Office, AHCCCS-OIG refers cases of suspected Medicaid fraud to the State Medicaid Fraud Control Unit for appropriate legal action. AHCCCS-OIG also has the authority to make independent referrals to other law enforcement entities.

- a. Pursuant to A.R.S. § 36-2918, AHCCCS-OIG has the authority to issue subpoenas and enforce the attendance of witnesses, administer oaths or affirmations, examine witnesses under oath, and take testimony, as the Inspector General deems relevant or material to an investigation, examination, or review undertaken by the AHCCCS-OIG.

- b. Pursuant to A.R.S. §§ 36-2918, AHCCCS-OIG has the authority to impose a civil monetary penalty of up to \$2,000.00 for each item or service claimed, and/or an assessment of an amount not to exceed twice the amount claimed.
- c. AHCCCS-OIG has been designated as a Criminal Justice Agency through the Federal Bureau of Investigations (FBI). This designation authorizes AHCCCS-OIG to access the National Crime Information Center (NCIC) database as well as the Arizona Criminal Justice Information System. Additionally, AHCCCS-OIG is authorized to receive and share restricted criminal justice information with other federal, state, and local agencies.
- d. Pursuant to federal law, AHCCCS-OIG shall suspend payments to providers where it determines that a credible allegation of fraud exists as specified in 42 CFR 455.23.
- e. Pursuant to state and federal law, AHCCCS is required in certain circumstances, and in other circumstances it may, act to

suspend, terminate, or exclude any person (individual or entity) from participation in the AHCCCS Program.

3. The Division has adopted Attachment B of the AHCCCS Operations Manual, Policy 103. The AdSS can use the sample provided under Attachment B for guidance on how to present such compliance activities. The AdSS's written Corporate Compliance Plan must be submitted to the Division annually as specified in Section F3, Contractor Chart of Deliverables.